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**SENATE BILL 384**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Phil A. Griego**

**AN ACT**

**RELATING TO GAMING; REMOVING THE LIMITATION ON THE GAMING CONTROL BOARD EXECUTIVE DIRECTOR'S SALARY; PROVIDING DISCRETION TO THE GAMING CONTROL BOARD REGARDING ISSUING LICENSES TO APPLICANTS WHO HAVE BEEN DENIED LICENSES IN NEW MEXICO OR OTHER STATES; ALLOWING THE BOARD TO ADOPT RULES FOR VOLUNTARY EXCLUSION OF COMPULSIVE GAMBLERS FROM GAMING ESTABLISHMENTS; IMPOSING COMPULSIVE GAMBLER FEES ON NONPROFIT GAMING OPERATORS.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 60-2E-9 NMSA 1978 (being Laws 1997, Chapter 190, Section 11) is amended to read:**

**"60-2E-9. EXECUTIVE DIRECTOR--EMPLOYMENT-- QUALIFICATIONS. --**

**A. The executive director shall be employed by, report directly to and serve at the pleasure of the board.**

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1           B. The executive director shall have had at least  
2 five years of responsible supervisory administrative experience  
3 in a governmental gaming regulatory agency.

4           C. The executive director shall receive an annual  
5 salary to be set by the board [~~but not to exceed eighty-five~~  
6 ~~thousand dollars (\$85,000) per year~~]. "

7           Section 2. Section 60-2E-16 NMSA 1978 (being Laws 1997,  
8 Chapter 190, Section 18) is amended to read:

9           "60-2E-16. ACTION BY BOARD ON APPLICATIONS. --

10           A. A person that the board determines is qualified  
11 to receive a license pursuant to the provisions of the Gaming  
12 Control Act may be issued a license. The burden of proving  
13 qualifications is on the applicant.

14           B. A license shall not be issued unless the board  
15 is satisfied that the applicant is:

16                   (1) a person of good moral character, honesty  
17 and integrity;

18                   (2) a person whose prior activities, criminal  
19 record, reputation, habits and associations do not pose a  
20 threat to the public interest or to the effective regulation  
21 and control of gaming or create or enhance the dangers of  
22 unsuitable, unfair or illegal practices, methods and activities  
23 in the conduct of gaming or the carrying on of the business and  
24 financial arrangements incidental thereto; and

25                   (3) in all other respects qualified to be

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1 licensed consistent with the laws of this state.

2 C. A license shall not be issued unless the  
3 applicant has satisfied the board that:

4 (1) the applicant has adequate business  
5 probity, competence and experience in business and gaming;

6 (2) the proposed financing of the applicant is  
7 adequate for the nature of the proposed license and from a  
8 suitable source; any lender or other source of money or credit  
9 that the board finds does not meet the standards set forth in  
10 Subsection B of this section shall be deemed unsuitable; and

11 (3) the applicant is sufficiently capitalized  
12 under standards set by the board to conduct the business  
13 covered by the license.

14 D. An application to receive a license,  
15 certification or work permit constitutes a request for a  
16 determination of the applicant's general moral character,  
17 integrity and ability to participate or engage in or be  
18 associated with gaming. Any written or oral statement made in  
19 the course of an official proceeding of the board or by a  
20 witness testifying under oath that is relevant to the purpose  
21 of the proceeding is absolutely privileged and does not impose  
22 liability for defamation or constitute a ground for recovery in  
23 any civil action.

24 E. The board [~~shall not~~] may refuse to issue a  
25 license or certification to an applicant who has been denied a

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1 license or certification in this state or another state, who  
2 has had a certification, permit or license issued pursuant to  
3 the gaming laws of a state or the United States permanently  
4 suspended or revoked for cause or who is currently under  
5 suspension or subject to any other limiting action in this  
6 state or another state involving gaming activities or licensure  
7 for gaming activities.

8 F. The board shall investigate the qualifications  
9 of each applicant before a license, certification or work  
10 permit is issued by the board and shall continue to observe and  
11 monitor the conduct of all licensees, work permit holders,  
12 persons certified as being suitable and the persons having a  
13 material involvement directly or indirectly with a licensee.

14 G. The board has the authority to deny an  
15 application or limit, condition, restrict, revoke or suspend a  
16 license, certification or permit for any cause.

17 H. After issuance, a license, certification or  
18 permit shall continue in effect upon proper payment of the  
19 initial and renewal fees, subject to the power of the board to  
20 revoke, suspend, condition or limit licenses, certifications  
21 and permits.

22 I. The board has full and absolute power and  
23 authority to deny an application for any cause it deems  
24 reasonable. If an application is denied, the board shall  
25 prepare and file its written decision on which its order

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1 denying the application is based. "

2 Section 3. Section 60-2E-34 NMSA 1978 (being Laws 1997,  
3 Chapter 190, Section 36) is amended to read:

4 "60-2E-34. EXCLUSION OR EJECTION OF CERTAIN PERSONS FROM  
5 GAMING ESTABLISHMENTS-- PERSONS INCLUDED. --

6 A. The board shall by regulation provide for the  
7 establishment of a list of persons who are to be excluded or  
8 ejected from a gaming establishment. The list may include any  
9 person whose presence in the gaming establishment is determined  
10 by the board to pose a threat to the public interest or  
11 licensed gaming activities.

12 B. In making the determination in Subsection A of  
13 this section, the board may consider a:

14 (1) prior conviction for a crime that is a  
15 felony under state or federal law, a crime involving moral  
16 turpitude or a violation of the gaming laws of any  
17 jurisdiction;

18 (2) violation or conspiracy to violate the  
19 provisions of the Gaming Control Act relating to:

20 (a) the failure to disclose an interest  
21 in a gaming activity for which the person must obtain a  
22 license; or

23 (b) willful evasion of fees or taxes;

24 (3) notorious or unsavory reputation that  
25 would adversely affect public confidence and trust that the

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1 gaming industry is free from criminal or corruptive influences;  
2 or

3 (4) written order of any other governmental  
4 agency in this state or any other state that authorizes the  
5 exclusion or ejection of the person from an establishment at  
6 which gaming is conducted.

7 C. A gaming operator licensee has the right,  
8 without a list established by the board, to exclude or eject a  
9 person from its gaming establishment who poses a threat to the  
10 public interest or for any business reason.

11 D. The board may adopt rules that allow a person  
12 who is a compulsive gambler to voluntarily exclude himself from  
13 a gaming establishment. The rules shall include the following  
14 provisions:

15 (1) the gaming operator licensee and the board  
16 shall keep the names of all persons who voluntarily exclude  
17 themselves from the gaming establishment confidential;

18 (2) a person requesting to voluntarily exclude  
19 himself from a gaming establishment shall be required to  
20 execute a waiver and release of claims for any damages  
21 resulting from his placement on the voluntary exclusion list;  
22 and

23 (3) a person who has voluntarily excluded  
24 himself from a gaming establishment and who enters the gaming  
25 establishment shall be asked to leave the gaming establishment

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1 by the gaming operator licensee and may be restricted from  
2 entering the area of the gaming establishment where gaming is  
3 conducted. If the person refuses to leave the gaming  
4 establishment, the person may be turned over to the local law  
5 enforcement authorities and may be charged with trespass  
6 pursuant to Section 30-14-1.1 NMSA 1978.

7 [D-] E. Race, color, creed, national origin or  
8 ancestry, age, disability or sex shall not be grounds for  
9 placing the name of a person on the list or for exclusion or  
10 ejection under Subsection A or C of this section. "

11 Section 4. Section 60-2E-47 NMSA 1978 (being Laws 1997,  
12 Chapter 190, Section 49, as amended) is amended to read:

13 "60-2E-47. GAMING TAX--IMPOSITION--ADMINISTRATION. --

14 A. An excise tax is imposed on the privilege of  
15 engaging in gaming activities in the state. This tax shall be  
16 known as the "gaming tax".

17 B. The gaming tax is an amount equal to ten percent  
18 of the gross receipts of manufacturer licensees from the sale,  
19 lease or other transfer of gaming devices in or into the state,  
20 except receipts of a manufacturer from the sale, lease or other  
21 transfer to a licensed distributor for subsequent sale or lease  
22 may be excluded from gross receipts; ten percent of the gross  
23 receipts of distributor licensees from the sale, lease or other  
24 transfer of gaming devices in or into the state; ten percent of  
25 the net take of a gaming operator licensee that is a nonprofit

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1 organization; and twenty-five percent of the net take of every  
2 other gaming operator licensee. For the purposes of this  
3 section, "gross receipts" means the total amount of money or  
4 the value of other consideration received from selling, leasing  
5 or otherwise transferring gaming devices.

6 C. The gaming tax imposed on a licensee is in lieu  
7 of all state and local gross receipts taxes on that portion of  
8 the licensee's gross receipts attributable to gaming  
9 activities.

10 D. The gaming tax is to be paid on or before the  
11 fifteenth day of the month following the month in which the  
12 taxable event occurs. The gaming tax shall be administered and  
13 collected by the taxation and revenue department in cooperation  
14 with the board. The provisions of the Tax Administration Act  
15 apply to the collection and administration of the tax.

16 E. In addition to the gaming tax, a gaming operator  
17 licensee that is a racetrack shall pay twenty percent of its  
18 net take to purses to be distributed in accordance with rules  
19 adopted by the state racing commission. An amount not to  
20 exceed twenty percent of the interest earned on the balance of  
21 any fund consisting of money for purses distributed by  
22 racetrack gaming operator licensees pursuant to this subsection  
23 may be expended for the costs of administering the  
24 distributions. A racetrack gaming operator licensee shall  
25 spend no less than one-fourth [~~of one~~] percent of the net take

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1 of its gaming machines to fund or support programs for the  
2 treatment and assistance of compulsive gamblers.

3 F. A nonprofit gaming operator licensee shall  
4 distribute at least sixty percent of the balance of its net  
5 take, after payment of the gaming tax and any income taxes,  
6 for charitable or educational purposes and for the treatment  
7 and assistance of compulsive gamblers. No less than one-fourth  
8 percent of the net take of the nonprofit gaming operator  
9 licensee's gaming machines shall be expended on compulsive  
10 gambler treatment and assistance programs. "